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**Has A Company Leader Misbehaved? – Internal
Investigations of Key Company Personnel**



“Power tends to corrupt and absolute power corrupts absolutely.”



“It is not power that corrupts, but fear. Fear of losing power corrupts those who wield it and fear of the scourge of power corrupts those who are subject to it.”



Those *subject* to power in a company—below C-suite—fear lack of importance and esteem. This can drive them to tell self-promotional lies. If a worker feels unvalued, they are more likely to exaggerate and lie about their accomplishments and skills.

Is an internal investigation warranted?

Challenges if investigation involves a company leader

Competence

Diligence

Thoroughness

(PA RPC and ABA Model RPC 1.1 and 1.3)

Define the scope and purpose of the investigation

(PA RPC and ABA Model RPC 1.2 and 1.13)

Identify the client and the client contact

(PA RPC and ABA RPC 1.13)

Shield the investigation from those being investigated

(PA RPC and ABA Model Rule 1.7)

Take advantage of the attorney-client privilege and work product doctrine.

- Counsel should direct investigation.
- Define legal purpose of investigation.
- If non-lawyers on investigative team, limit number and counsel should direct.
- Attorney-client communications should include legal advice.
- Label privileged communications as “privileged and confidential.”
- Assume communications/notes subject to production.
 - Limit written communications between non-lawyers
- Ensure investigation communications not accessible to employees.

Make a plan-- Anticipated steps in the investigatory process, i.e. documents to be gathered, individuals to be interviewed, etc.

Conducting the Investigation

Document gathering considerations:

- Document retention policy
- Issue litigation hold
- Retain forensic team?

Planning for Interviews

Pool Counsel Issues

(Pa. R.C.P. and ABA 1.4(b), 1.6, 1.7, 1.16, and 1.18)

Conducting the Interviews

(Candor: PA RPC and ABA Model Rule 4.1 and 4.3)

Concluding the Investigation



EXAMPLE

Case Study: Sandusky case